

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Dec 29, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

THEODORE FRANCIS STEWART,

Petitioner,

v.

DAN WHITE,

Respondent.

NO: 2:20-CV-00315-RMP

ORDER DISMISSING PETITION AS
TIME-BARRED

By Order filed November 18, 2020, the Court directed Petitioner Theodore Francis Stewart to submit a Fourth Amended Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 that includes sufficient facts to establish federal subject-matter jurisdiction by December 18, 2020. ECF No. 24. Petitioner has not filed a Fourth Amended Petition as directed, and the single-page letter received by the Court on December 15, 2020, does not cure the deficiencies identified in the Third Amended Petition. ECF No. 25.

In its Second Order to Amend Petition, this Court found that it was unclear from the face of the Third Amended Petition whether Petitioner had fully

ORDER DISMISSING PETITION AS TIME-BARRED -- 1

1 exhausted his grounds for federal habeas corpus relief by presenting each claim to
2 the highest state court. ECF No. 24 at 5. This Court also determined that
3 Petitioner's federal habeas corpus petition was not timely, and he failed to present
4 any facts demonstrating that the limitation period should be statutorily or equitably
5 tolled. *Id.* at 5, 7–8.

6 Despite the opportunity to amend his petition to demonstrate an equitable
7 basis to toll the running of the federal limitations period, Petitioner has failed to
8 file a Fourth Amended Petition. Accordingly, the Court finds that Petitioner's
9 federal habeas petition is not timely and there is no basis to toll the onset of the
10 limitations period.

11 Therefore, for the reasons set forth above and in this Court's Second Order
12 to Amend Petition, ECF No. 24, **IT IS ORDERED** that the Third Amended
13 Petition is **DISMISSED with prejudice** as time-barred under 28 U.S.C. § 2244(d).

14 **IT IS SO ORDERED.** The District Court Clerk shall enter this Order, enter
15 judgment in favor of Respondent and against Petitioner, forward copies to
16 Petitioner, and **CLOSE** the file. The Court further certifies that, pursuant to 28

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1 U.S.C. § 1915(a)(3), an appeal from this decision could not be taken in good faith,
2 and there is no basis upon which to issue a certificate of appealability. 28 U.S.C. §
3 2253(c); Fed. R. App. P. 22(b).

4 **DATED** December 29, 2020.

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6 *s/ Rosanna Malouf Peterson*
7 ROSANNA MALOUF PETERSON
8 United States District Judge
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